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No. 72

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In the Supreme Court of the United States

OCTOBER TERM, 1958

UNITED STATES OF AMERICA, APPELLANT

v.

GEORGE DONALD SHIREY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The memorandum opinion of the District Court (R. 3–7) is not reported.

JURISDICTION

The order of the District Court dismissing the information as to appellee, on the ground that the facts alleged did not constitute an offense under 18 U. S. C. 214, was entered on March 17, 1958 (R. 8). Notice of appeal to this Court was filed in the District Court on April 14, 1958 (R. 8–9). This Court noted probable jurisdiction on October 13, 1958 (R. 10). The jurisdiction of this Court to review on direct appeal a judgment dismissing an information, based on a con-

struction of the statute on which the information is founded, is conferred by 18 U. S. C. 3731.

STATUTES INVOLVED

18 U. S. C. 214:

> Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

18 U. S. C. 215:

> Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.
>
> Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined not more than $1,000, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

QUESTION PRESENTED

Whether 18 U. S. C. 214 proscribes an offer or promise to a congressman to make payments to a political party in return for the use of influence to procure an appointment to a federal position.

STATEMENT

The information charged that appellee, in violation of 18 U. S. C. 214, *supra,* on or about December 5, 1953, did wilfully "offer or promise to S. Walter Stauffer, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania" (R. 1). The District Court dismissed the information as not stating facts sufficient to constitute an offense under 18 U. S. C. 214 (R. 7). The court stated that the information "does not charge that the offer was to contribute to the individual named therein, a Congressman; the offer was made to the individual to contribute to the Republican Party" (R. 7). It construed the statute to require that the ultimate recipient of the money, the Republican Party, rather than the congressman receiving the offer or promise, must be a "person, firm, or corporation," and held that the Republican Party is not "a person, firm, or corporation" (R. 7). In addition, the court adverted to the fact that the "counterpart" section (18 U. S. C. 215), relating to a solicitor of an offer, specifically mentions a political contribution as money "or thing of value"; the court deemed this an indica-

tion that a political contribution was excluded from the phrase "money or thing of value" as used in the instant provision relating to the offerer of such a contribution (R. 4, 7).

SUMMARY OF ARGUMENT

The District Court's dismissal of the information charging that appellee made an offer to a congressman to donate $1,000 a year to the Republican Party for the use of influence to obtain a postmastership involved a two-fold construction of the statute, which we believe to be erroneous in both aspects. The court held that (1) where an offer is made to an individual to pay money to someone else, the ultimate payee (as distinguished from the immediate offeree) must be the "person, firm, or corporation" named in the statute, and that here the ultimate payee, the Republican Party, did not come within that category; and (2) even if there was here an offer to a "person" (the congressman), the offer to the congressman to make contributions to the Party was not a "thing of value" under the statute.

I.

The offer to the congressman was within the proscription of the statute as an offer *to him* of something "of value" to him.

A. The phrase "to any person, firm, or corporation" in Section 214 is reasonably read as defining only the person (or entity) to whom the offer or promise is made (here, the congressman) and who is to use his influence to procure an appointive office. It does not define the individual or entity to whom the money or

thing of value is ultimately to be paid (here, the Republican Party), when that person is different from the offeree as in this case. If the section is read as the District Court construed it, with "person, firm, or corporation" defining only the ultimate recipient, there is no phrase left defining the persons who should not be approached to use influence. This would be an anomaly in a statute designed to prevent solicitation of the use of influence.

B. An offer of a substantial contribution to a congressman's political party is a "thing of value" within 18 U. S. C. 214.

1. Congress, in employing the term "thing of value" in the disjunctive from "money", used an intrinsically broad term to encompass old, and anticipate new, forms of temptation in the area of job-purchasing. The extent of the value of the offer to this particular congressman was, of course, left undetailed, by reason of the dismissal of the information in advance of trial, but it is obvious that it would be of great value to a congressman to be the person responsible for obtaining substantial contributions to his party. And the increase in party funds might well be available for a future political campaign of his own. Appellee's argument that political contributions are not criminal is not in point; what is here prohibited is the offer of such a consideration, as any other consideration, as a means of job-purchasing.

2. The district judge, in assuming the offer not to be a "thing of value" under the statute, relied upon the specific reference to political contributions in another section (18 U. S. C. 215) relating to sellers of jobs

rather than buyers. The judge disregarded the fact that, in this other reference, political contributions were treated not as something apart from "thing of value" but as an illustration thereof. The term is used in a phrase prohibiting the solicitation of any money or thing of value "as" a political contribution or for personal purposes. The term "political contribution" is thus employed only as an illustration of *how* money or a thing of value can be solicited, not as narrowing the broad range of the general term "thing of value."

There is a difference between the situation of a solicitor of job-bribes and an offerer of such bribes which probably accounts for the greater specificity in the section dealing with solicitation (18 U. S. C. 215). The job-buyer would always be acting for a specific personal reason—the job—and would ordinarily be in no position to claim that he was acting for some general public good. A job-seller, however, could more readily claim that he was merely engaging in general political activity. It was to this form of excuse that the statutory illustration in Section 215 was addressed.

In addition, the different structures of the two sections, dealing respectively with the job-buyer and the job-seller, afford an explanation of the use of illustrations in one section and not in the other. The precursor of the present Section 214 already embodied comparable coverage by means of the phrase proscribing an offer 'to any person, firm, or corporation," which, as we demonstrate, *infra*, would be expected to include a political party. No such inclu-

sion was otherwise spelled out in the precursor of Section 215, and the specification of a "political contribution" would therefore serve a useful purpose in that section. Accordingly, the specific mention in Section 215 of a political contribution as a "thing of value" supports, rather than negates, the conclusion that such a contribution is a "thing of value" that may not be offered under Section 214.

3. The legislative history supports these views. While it does not afford an outright explanation of the difference in structure (and illustrative terms) of Sections 214 and 215, it does disclose Congress' concern with political contributions. Had there been a purpose to make so noteworthy and incomprehensible a distinction as allowing job-purchasers to employ such contributions while prohibiting them in the case of job-sellers, that distinction would have been discussed and somehow explained and justified. The purposes of the legislation were, instead, stated in the broadest terms. While references to solicitations of political contributions as pay for offices were naturally in numerical preponderance, one of the congressmen spoke in the same vein of those who solicited campaign contributions and of those who made them.

4. That "thing of value," under Section 214, is no less broad than under Section 215, is made even clearer when the language is examined in the context of its reenactment in 1948 in Title 18 of the United States Code, and more specifically in Chapter 11, entitled "Bribery and Graft." The chapter exhibits a repeated pattern of the use of the general phrase "thing of value" simultaneously with specific illustra-

tions of various types of value encountered in the respective circumstances of bribery or graft dealt with in the particular section. Fifteen of the 23 sections employ the term "thing of value." Three of these 15 sections concurrently add the phrase "check, order, conract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value"; six add the phrase "directly or indirectly"; one adds the phrase "or any other bribe"; one adds the term "present"; another adds the alternate term "gratuity"; two add the alternate terms "fee" and "commission"; one adds the alternate term "bonus", and another the alternate term "gift."

If, as assumed by appellee, the specification of a particular type of thing "of value" were to exclude its application in other sections where not similarly specified, the result, in this chapter of Title 18, would be almost a complete negation of the entire purpose of the enactment. The term "thing of value" would be so narrowed by exclusion from it of a "check", "order", "undertaking", "gratuity", "bribe", "fee", "commission" that it would be of very limited application when used, as it is often used, with only one or a few of these specific terms.

II.

Even if the district judge's premise were accepted—*i. e.*, that the statute should be read as prohibiting only an offer to give "money" to a "person, firm, or corporation"—his conclusion that the Republican Party does not come within this term totally

disregards the effect of 1 U. S. C. 1, enacted into positive law a year before Title 18 was so enacted. Section 1 of Title 1 of the United States Code provides that "words importing the singular include and apply to several persons, parties, or things", and that "the words 'person' and 'whoever' include corporations, companies, *associations,* firms, partnerships, societies, and joint stock companies, as well as individuals * * * unless the context indicates otherwise" (emphasis added).

The district judge himself defined a political party as "a body of persons *associated* for the purpose of promoting certain views, opinions, or principles" (R. 7; emphasis added). His suggestion that if Congress had intended application to political parties it would have added that term to the definition ignores the fact that Congress in 1 U. S. C. 1 had already broadened the term "person" to include an "association".

ARGUMENT

The holding of the District Court that the present federal statutes do not prohibit one from endeavoring to obtain an individual's influence to secure an appointive federal office by offering to make contributions to his political party is incorrect and contrary to the intent of Congress. Section 214 of Title 18 of the United States Code, *supra,* p. 2, does make such an offer a federal crime. Two portions of the section are involved in the erroneous ruling of the court below—"person, firm, or corporation", and also "thing of value"—and in each instance the court has misconstrued the statute.

I.

AN OFFER TO AN INDIVIDUAL TO CONTRIBUTE MONEY TO HIS POLITICAL PARTY IS AN OFFER OF A "THING OF VALUE" TO THAT "PERSON" UNDER 18 U. S. C. 214

Our main position is that the offer to an individual (Congressman Stauffer) to contribute money to his political party (the Republican Party) is an offer of a "thing of value" to the individual "person" within the prohibition of 18 U. S. C. 214, *supra*, p. 2. As noted in the Statement, *supra*, pp. 3–4, the District Court rejected this contention on two separate grounds: (a) where an offer is made to an individual to pay money to someone else, the ultimate payee (as distinguished from the immediate offeree) must be the "person, firm, or corporation" named in the statute (and the Republican Party is not such a "person, firm, or corporation")[1] and (b) even if the statutory term "person, firm, or corporation" applies to the offeree (rather than the ultimate payee), there was no crime in this case because the offer to the congressman to make substantial contributions to his party did not constitute the offer of a "thing of value" under the statute. In this Point, we show, *first*, that the term "person, firm, or corporation" applies to the offeree (the congressman), not the ultimate recipient (the party); and, *second*, that an offer to make contributions to the party is the offer of a "thing of value" to the congressman. In Point II, we make the alternative argument that, in any event, the in-

[1] We discuss in Point II, *infra*, pp. 25–26, the court's holding that a political party cannot be a "person, firm, or corporation" under Section 214.

formation charges an offer to give *money* to the Republican Party—which is (contrary to the District Court's holding) a "person" under the statute.

A. THE STATUTORY PHRASE "TO ANY PERSON, FIRM, OR CORPORATION" RELATES TO THE OFFEREE, NOT THE ULTIMATE RECIPIENT

The phrase "to any person, firm, or corporation" in Section 214 is reasonably read as defining only the person (or entity) to whom the offer or promise is made and who is to use his influence to procure an appointive office. It does not define the individual or entity to whom money (or a thing of value) is ultimately to be paid (when that person is different from the offeree, as in this case). The statutory pattern clearly fits this reading. In stating that the statute limits "the payee" to a "person", the District Court disregarded the statute's alternative to "money"—a "thing of value"—as to which the word "payee" is inappropriate. Moreover, if the section is read as the District Court construed it, with "person, firm, or corporation" defining only the ultimate recipient of the money or thing of value, there would be no phrase left defining the persons who should not be approached to use influence, *i. e.*, the offerees. This would be an anomaly in a statute designed to prevent solicitation of the use of influence.

In short, what the statute provides is that no offer should be made to a "person, firm, or corporation" which would induce *that* person, firm, or corporation to use influence; the ultimate recipient of the money or other thing of value is not described or characterized by the section. Here, the information admittedly charged an offer to a "person", Congressman

Stauffer. There is a question as to whether what was offered to him—the payment of money to his political party—is a "thing of value" under the statute; that is the important question in this case which we discuss in subpoint B of Point I, *infra*. But the District Court erroneously created an inappropriate issue by holding that the statutory words "person, firm, or corporation" apply to the ultimate recipient of what is offered rather than to the offeree.

B. AN OFFER TO A CONGRESSMAN TO MAKE SUBSTANTIAL CONTRIBUTIONS TO HIS POLITICAL PARTY, IN CONSIDERATION OF INFLUENCE TOWARD A POSTMASTERSHIP, IS THE OFFER OF A "THING OF VALUE" WITHIN THE PROHIBITION OF 18 U. S. C. 214

The offer to Congressman Stauffer for the use of influence, charged in the information, was to pay $1,000 a year to the Republican Party.[2] The real issue in this case, in our view, is whether this was an offer of a "thing of value" to the congressman within the coverage of the statute. We submit that it was. It seems evident that an offer to make annual contributions to his party is the offer of a thing having substantial value to a congressman. It is therefore an offer prohibited by 18 U. S. C. 214.

1. Congress employed a broad general term, "thing of value," in addition to the specific term "money"

The statute discloses on its face its purpose to prohibit, not merely offers of "money" in order to influence appointment to federal office, but the whole broad range of values that can be utilized to tempt

[2] The fact that Congressman Stauffer is a Republican is a matter of judicial knowledge. Congressional Directory, 1953 ed., p. 125; 1954 ed., p. 124.

anyone to use influence. Even criminal legislation, when it is designed to accomplish a broad social objective, is to be construed so as to accord with its basic purpose. *United States* v. *Dotterweich*, 320 U. S. 277, 280; *United States* v. *Lacher*, 134 U. S. 624, 628. "We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean." *Roschen* v. *Ward*, 279 U. S. 337, 339.[3]

This Court, in rejecting an argument for a narrow construction (there designed to exclude from the offense of solicitation of job-purchases the case of federal positions not yet established), said in *United States* v. *Hood*, 343 U. S. 148, 150–151:

> The evil at which the statute is directed is the operation of purchased, and thus improper, influence in determining the occupants of federal office. * * * Nothing has been suggested, either by the sparse legislative history or by prior judicial construction, to restrain us from giving effect to the obvious ordinary reading of the statute. It is pressed upon us that criminal statutes are to be strictly construed. But this does not mean that such legislation "must be construed by some artificial and con-

[3] That the present statute is to be given a broad construction to accomplish its underlying policy has been demonstrated by the revisers of Title 18 of the United States Code in modifying the language of the original provision for its enactment as 18 U. S. C. 214. In explaining the addition of the words "or place," the revisers stated that the words were inserted after the term "appointive office" in order "to give broader scope to the section" (Reviser's Note following 18 U. S. C. 214).

> ventional rule." *United States* v. *Union Supply Co.*, 215 U. S. 50, 55. We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in.

As "a matter of ordinary English speech", the term "thing of value" is a very broad one designed to encompass old, and anticipate new, forms of temptation which may be devised. Many things in addition to money (to be paid directly) can be of value to a promisee. Specifically, a promise of an annual contribution to a political party can be—and on its face would almost certainly be—of value to one whose elective office runs for two years. The extent of the "value" of the offer to Congressman Stauffer, embodying very substantial contributions promised to his political party, was left undetailed, because of the district judge's dismissal of the information in advance of trial. But judges "need not be blind to the fact[s] of political life" (*United States* v. *Hood, supra,* 343 U. S. at 150). It is obvious that it would be of great value to a congressman to be the person responsible for obtaining such substantial contributions. Indeed, the increase in party funds might well be available for a future political campaign of his own. At the very least, in the present posture of the case—upon dismissal of the information—the possibility that the offer of contributions was factually a "thing of value" to the offeree must be taken as something provable under the information, and thus conceded.

It is of course true, as argued in appellee's Motion to Affirm (p. 5), that a contribution to a political

party is not intrinsically criminal but that it is rather to be encouraged. But it is unnecessary to elaborate the difference between a contribution to a party as an expression of political support, and the promise of a contribution as consideration for the use of influence to obtain appointive office.

2. The District Court erred in relying upon the specific reference to political contributions in 18 U. S. C. 215 as an exclusion of such contributions from 18 U. S. C. 214

The District Court relied on the fact that the section here involved, 18 U. S. C. 214, was originally enacted as part of a statute (44 Stat. 918) which read as follows:

> * * * That it shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.
>
> SEC. 2. It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.
>
> * * * * *

The court assumed that the use of the term "political contribution" in Section 2 (dealing with solicita-

tions of bribes)[4] tended to negate an intention to include offers of such contributions in Section 1 (now 18 U. S. C. 214). But the court overlooked the manner in which the term "political contribution" was employed. The contribution was not listed in the second section as something different from, or in addition to, a "sum of money or thing of value", but rather as one means of giving money or a thing of value. Had the language prohibited "any sum of money, thing of value, *or* political contribution" it might have been taken as some indication of a congressional view that such a contribution was not included in a "thing of value." But that is not the case. What is prohibited is the solicitation of "any sum of money or thing of value, whatsoever". The reference to a "political contribution" is to a solicitation of money or thing of value "as" a political contribution or for personal purposes, not as the solicitation of something separate. Congress was making it clear that the solicitation of money or other thing of value for the unlawful purpose was prohibited, whether the money or thing of value was to be used as a political contribution or for the solicitor's personal benefit. The reference to a political contribution was therefore employed only as an illustration or example of *how* money or a valuable benefit can be solicited, and not as narrowing the broad range of "thing of value, whatsoever." In the absence of clear treatment of a political contribution as something apart from a thing of value, the fact that the illustration or example was given in one section of

[4] Now 18 U. S. C. 215, *supra*, p. 2.

the statute and not in another does not have the dispositive effect which the court below attributes to it.

There is a difference between the situation of a solicitor (or seller of jobs) and an offerer (or buyer) which probably accounts for the greater specificity in the section dealing with solicitation. An offerer seeking to *purchase* a position would always be acting for a specific personal motive—the job sought to be obtained—and would not ordinarily be in any position to claim that what he was doing was for some general public good. On the other hand, the solicitor of funds could frequently be in a position to advance a claim, spurious though it might be, that he was not seeking money for himself but merely engaging in general political activity. It was to this latter form of excuse, largely available only to the solicitor, that the statutory illustration was addressed. That type of specificity would not ordinarily be required as to an offerer, for the excuse would not ordinarily be attempted by or available to an offerer.

The precursor of Section 214, moreover, already embodied a comparable coverage by means of different wording appropriate to the offerer and not appearing in the second section, *i. e.*, the phrase, "Whoever pays or offers or promises any money or thing of value, *to any person, firm, or corporation* * * *" [emphasis added]." For reasons discussed below in Point II, *infra*, pp. 25–26, the words "person, firm, or corporation" would include an offer to a political party. Hence, an offer to the party to pay money, as a consideration for use of influence to secure an appointment, was already covered. Since, however, the struc-

ture of Section 215 (former Section 2) omits this phrase there was a possible opening for contentions by a job-seller, in the case of a political contribution, that he did not "receive" the money or thing of value, or solicit its receipt, but was only a conduit. See the legislative history adverting to this excuse, *infra*, pp. 19–20. The specific mention in Section 215 of political contributions as a "thing of value" which could not be bartered for appointive office thus supports, rather than negates, the conclusion that it is a "thing of value" which may not be offered under Section 214.

3. *The legislative history supports the view that political contributions to a party are within the prohibiton of offering a "thing of value"*

While the legislative history affords no outright explanation of the difference in structure (and illustrative terms) between Section 214 relating to the offerer and the companion section (Section 215) relating to a solicitor, the history does tend to show that Congress intended to include political contributions within the scope of "thing of value" in both provisions, whether solicited or offered. There is no reference in the committee reports to any difference between solicitor and offerer in this respect. A difference between the coverage of the two sections would have been sufficiently noteworthy to have been mentioned, if a difference had been intended. Moreover, there is no reference to any exclusion of political contributions from the proscribed devices of a job-purchaser. To the contrary, the purpose of the instant enactment (Section 214) was stated in the broadest

terms in the House committee report (H. Rep. No. 1366, 69th Cong., 1st Sess., June 3, 1926):

> This bill seeks to punish the purchase and sale of public offices. Certain Members of Congress have brought to the attention of the House both by speeches on the floor and statements before the Judiciary Committee a grave situation, disclosing corruption in connection with postal appointments in Mississippi and South Carolina. It is believed that this bill will prevent corrupt practices in connection with patronage appointments in the future.

In addition, the legislative history affirmatively shows that Congress was directing its attention to the promise of federal office, particularly post-office positions, in return for contributions to the party (65 Cong. Rec. 1409–1412). Congressman Stevenson had reported of one solicitor (65 Cong. Rec. 820), "Oh, he said he was collecting this money for a campaign fund." It is therefore understandable that Congress found it appropriate to spell out specifically, as to solicitors, that it was prohibiting solicitation "either as a political contribution, or for personal emolument." But nothing in the history indicates that the precaution of specifically including a political contribution as a "thing of value" to a solicitor or recipient was to be applied in the other section as a limitation, rather than clarification, of the otherwise inclusive scope of the term "thing of value" with respect to an offerer. To the contrary, in the congressional discussions in the years preceding the enactment of the legislation, while references to solicitations of pay for offices were naturally in numerical preponderance, it

was noteworthy that Congressman Wurzbach spoke, not alone of the solicitors of campaign contributions, but also in cynical vein of those who made the contributions (67 Cong. Rec. 4942): "Many were 'called' to contribute, and many did contribute with the inspired hope that they would be among the 'chosen elect'."[8]

[8] As in the case of the history leading to enactment of the legislation, it could reasonably be expected that, if there were actually a distinction excluding political contributions in the case of the buyers of jobs, but not of sellers, some mention of the distinction would have appeared somewhere in the writings or utterances of congressmen and administrative officials when they were called upon for relatively accurate descriptions of the enactment. We find no recognition of any such distinction. Thus, when Congress, in 1951, amended Section 2 (concerning solicitation) to prohibit obtaining of fees by employment agencies (65 Stat. 320), the committee reports described the law as follows: "Under existing law it is a criminal offense for anyone to solicit or receive any money or thing of value * * *" (S. Rep. No. 3, 82d Cong., 1st Sess., p. 1; H. Rep. No. 784, 82d Cong., 1st Sess., p. 2). In 1946, 1947, and 1949, with respect to a similar proposed amendment, similar language appeared (S. Rep. No. 1036, 79th Cong., 2d Sess., March 12, 1946; S. Rep. No. 2, 80th Cong., 1st Sess., January 15, 1947; S. Rep. No. 7, 81st Cong., 1st Sess., January 24, 1949).

The same treatment of the political contribution language appeared in the speech of Senator McCarran, of the Senate Judiciary Committee, in introducing the 1951 amendment on the floor of the Senate (97 Cong. Rec. 10682), in the letter of the President of the Civil Service Commission to the Senate, dated December 14, 1945 (reproduced in S. Rep. No. 3, *supra*), and in the letter of the Executive Director of the Civil Service Commission to the House Judiciary Committee, dated February 20, 1951 (reproduced in H. Rep. No. 784, *supra*). And see the even broader summary "pay or offer or promise to pay for the use of influence", in the letter of the Attorney General to the Senate, dated February 19, 1946, in S. Rep. No. 3, *supra*.

4. As reenacted in 1948, within its context of the codified provisions on "Bribery and Graft" in Title 18, the instant Section 214 clearly prohibits political contributions as a means of influencing appointment to a federal position

That "thing of value", as used in Section 214, was not intended to be less broad than the same term as used in Section 215, where political contributions are specifically spelled out as a thing of value, becomes even clearer when the language is reexamined within the context of its reenactment by Congress in 1948 in Title 18 of the United States Code, and more specifically in Chapter 11, entitled "Bribery and Graft". What is immediately apparent from that chapter is a repeated pattern of use of the general phrase "thing of value", together with specific illustration of various types of things of value encountered in the respective areas of bribery or graft dealt with in the particular sections. If the rule contended for by appellee—to exclude from things "of value" a thing specifically designated elsewhere in the comparable provisions of the criminal code—were to be applied consistently in this chapter, scarcely a shred of meaning would be left for the intrinsically broad phrase "thing of value". Thus, while 15 of the 23 sections of the chapter employ the term "thing of value",[6] three of these 15 sections concurrently add the phrase "check, order, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value",[7] six add the phrase "directly or

[6] 18 U. S. C. 201, 204–206, 208–209, 211–217, 219–220.

[7] 18 U. S. C. 201, 204 and 205 (which also adds "promise").

indirectly",[8] one adds the phrase "or any other bribe" (18 U. S. C. 209), one adds the term "present" (18 U. S. C. 211), one adds the alternate term "gratuity" (18 U. S. C. 213), two add the alternate terms "fee" and "commission" (18 U. S. C. 219–220), one adds the alternate term "bonus" (18 U. S. C. 219), and another the alternate term "gift" (18 U. S. C. 220).

It thus is clear that if, as assumed by appellee, the specification of a particular type of thing "of value" were to exclude its application from sections where it is not similarly specified, the result in Chapter 11 of Title 18 would be complete negation of the entire purpose of the enactments—the term "thing of value" would be so narrowed by exclusion from it of a "check", "order", "undertaking", "gratuity", "bribe", "fee", and "commission" that it would be meaningless when used, as it is often used, with only one or a few of these specific terms. A person who gave a check as a bribe to a judicial officer would be enabled to argue that this was not a "thing of value" under Section 206 because in the immediately preceding Sections 204 and 205, proscribing offers to and receipts by members of Congress, the statute spelled out "check, order", and the like, but did not do so in Section 206. The offerer could, with the same questionable mode of interpretation, contend that if he gave a "fee" to the judicial officer this would not be within the broader term "money or thing of value" since the term "fee" was used separately and specifically when so intended (*e. g.*, in Sections 219–220). The same nullifying type of defense could be similarly

[8] 18 U. S. C. 205, 206, 209, 212, 213, 216.

advanced by a judicial officer receiving a check (Section 208), by a person giving a check to a witness (Section 209), and by the whole array of offenders under Sections 211–216, 219–220, where checks are not specifically mentioned. Under other sections specifying only one or more general means of corruption, such as "fee or compensation" (Section 203), "bribe" (Section 207), "loan or gratuity" (Sections 217–218), "fee, commission", or "other consideration" (Sections 221–222), and "fee, charge or other consideration" (Section 223), it would require only the ingenuity of an offender in employing one or another of the means specified in another section, but not in the particular one, to evade the intended general effect of the terms actually employed in that particular section.

Appellee's argument, shown to be wholly incorrect by this scheme of Chapter 11 of Title 18, is also put to rest by the language employed in the notes of the revisers. In explaining why the words "check, order" were inserted in Sections 201–202, 204–205, 207, the revisers stated (Reviser's Note following 18 U. S. C. 201) that the insertion was made to "clarify" the statute and to meet a district court holding that a check was not a thing of value. Had the check not already been contemplated as included under a "thing of value" the revisers would not have acted to "clarify" the statute but would have stated that they were "adding" to, or "amending" the statute. In specifically designating checks and orders, the revisers were, accordingly, in no sense excluding those items from "things of value" in the many other sections of the statute where there was no such specific illustra-

tion (18 U. S. C. 206, 208–209, 211, 212–216, 219–220). That, we submit, is the general pattern of Chapter 11 of 18 U. S. C.

Equally patent as a part of the structure of the Code chapter on bribery and graft is the specification of different items of "things of value" for the *offerers* as distinguished from *receivers* of bribes, with the manifest purpose of covering specifically the kinds of excuses typically advanced by the respective groups of offenders, but with no discernible purpose to narrow the broadly inclusive prohibition against giving or taking a thing of value. Thus, in Section 212 dealing with an *offer* to a customs officer and Section 213 dealing with a *receipt* by a customs officer, the additional specification "gratuity" appears only in Section 213. In Sections 219 and 220, dealing with procurement of a Federal Reserve bank loan, the specification "bonus" appears only in Section 219 relating to the procurer of the loan, and the specification "gift" appears only in Section 220 relating to the bank officer or employee. In the single Section 221 respectively dealing, in separate paragraphs, with *receivers* of unauthorized fees in connection with farm loans, and persons *causing* land banks to give unauthorized fees, only the first paragraph employs the term "beneficiary", and only the second paragraph the term "bonus".

Accordingly, we think it clear from the entire context in which Sections 214 and 215 find their setting that any interpretation seeking to adduce fine distinctions from the specific terms employed in various

sections of Chapter 11 of Title 18—terms used by way of clarification and in an effort to button up all loopholes—would produce only the most specious of distinctions and would do violence, not only to Section 214, now before the Court, but to the entire structure of the legislation seeking to deal with the multifold and always ingenious activities of bribery and graft.

II.

IN ANY EVENT, THE INFORMATION CHARGES AN OFFER TO GIVE MONEY TO A POLITICAL PARTY, WHICH IS A "PERSON, FIRM, OR CORPORATION" UNDER 18 U. S. C. 214

We have argued in Point I, *supra*, that 18 U. S. C. 214 prohibits an offer to a congressman to give money to his party, because such a gift to the party is a "thing of value" to the congressman, who is clearly a "person" (under the statute) to whom the offer is made. But even if we are wrong, and the statute must be read as prohibiting in this case only an offer to give "money" to any "person, firm, or corporation" (here, the offer to give money to the Republican Party),* the information still charges a crime. For the status of a political party as a "person, firm, or corporation" under the statute seems clear, despite the District Court's contrary holding.

In 1926, when the forerunner of Section 214 was enacted, Section 1 of the Revised Statutes provided:

* In other words, if a contribution to a congressman's political party is not considered to be an offer of a "thing of value" *to him*.

> In determining the meaning of the revised statutes, or any act or resolution of Congress, passed subsequent to February twenty-fifth, eighteen hundred and seventy-one, words importing the singular number may extend and be applied to several persons or things; * * * the word "person" may extend and be applied to partnerships and corporations * * * unless the context shows that such words were intended to be used in a more limited sense * * *.

Later, Section 1 of Title 1 of the United States Code, enacted into positive law a year before Title 18 was similarly enacted, provided that "words importing the singular include and apply to several persons, parties, or things", and that "the words 'person' and 'whoever' include corporations, companies, *associations,* firms, partnerships, societies, and joint stock companies, as well as individuals * * * unless the context indicates otherwise" (emphasis added).

The District Court below itself defined a political party as "a body of persons *associated* for the purpose of promoting certain views, opinions, or principles" (R. 7; emphasis added), but the judge at no point adverted to 1 U. S. C. 1, *supra.* The suggestion that if Congress had intended political parties to be covered by 18 U. S. C. 214, it would have added that term to the section's definitional phrase—in addition to "person, firm, or corporation"—ignores the fact that the definition of "person" in 1 U. S. C. 1 had already been broadened to include an "association", which the court conceded to be a proper definition of a political party.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted.

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